Supreme Court, U.S.
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No. 01-913

IN THE

Supreme Court of the United States

LELAND JACOBS,

Petitioner,

v.

RICE COUNTY, MINNESOTA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does the Petitioner's mere assertion that he did not receive his mailed copy of the order terminating his parental rights give rise to a constitutional claim of denial of due process or equal protection?

STATEMENT OF THE CASE

Two termination of parental rights petitions were filed on June 6, 2000 in Rice County District Court. One of the petitions involved the Petitioner's two children and the other petition related to a third child. Petitioner's ex-wife was the parent of all three children. Petitioner was a party only to the proceedings involving his two children. Hearings concerning these two petitions were joined although separate Notices of Filing of Order were issued for each file.

A settlement conference was scheduled for September 21, 2000 and a trial scheduled for September 26, 2000. In the matters involving his two sons, separate Summons for both the settlement conference and trial were prepared and personally served upon Mr. Jacobs on August 25, 2000, by a deputy sheriff of Ramsey County. The affidavits of service were returned to the Rice County Court Administrator and filed with the court on August 30, 2000.

Petitioner sent a letter to the court dated September 12, 2000 indicating that he would not be appearing on this matter in Rice County District Court. A trial was held on September 26, 28 and 29, 2000 and the Court issued Findings of Fact, Conclusions of Law and Order terminating Petitioner's parental rights on November 2, 2000 which was filed with the Court Administrator on November 3, 2000.

The Rice County Court Administrator issued and mailed the Notice of Filing of Order on November 3, 2000. The notice was served by mail on the Petitioner, the attorney for the children, the county social worker, the attorney for the mother and the guardian ad litem.

An appeal was timely filed by the mother and her attorney, one of the six parties listed on the Notice of Filing

of Order. Following oral argument, the Minnesota Court of Appeals affirmed the termination of parental rights order. The Minnesota Supreme Court denied further review.

REASONS FOR DENYING THE WRIT

Petitioner alleges that he was denied due process because he failed to timely receive a copy of the court's order terminating his parental rights. He asserts that he did not receive an order from the court until after he requested a copy and after the thirty (30) day period for appeal had run.

Mr. Jacobs was personally served with the Summons and Petition for Termination of Parental Rights when this action was initially commenced. Mr. Jacobs notified the Court shortly thereafter that he would not attend any of the hearings in this matter. He had also failed to attend the seven scheduled review hearings in the underlying child protection case in 1998 and 1999 after appearing for the initial hearing in May 1998. Mr. Jacobs advised the court in a letter dated September 12, 2000:

> In summary, I do not plan on appearing in Rice County District Court on this matter and have my right to privacy further invaded. As I stated earlier, I believe Rice Court District Court is without personal jurisdiction over me and there is certainly no basis in fact for the court to even consider what it appears the court is considering. App. 23

Mr. Jacobs included his post office address in his correspondence.

The Minnesota Rules of Juvenile Procedure set out the actions that both the court and court administrator's office must follow in a termination of parental rights proceeding.

In accord with Rule 74.05 Subd 3, following a termination trial, if a court finds that the statutory grounds set forth in a petition for termination of parental rights are proved, the court shall terminate parental rights and the findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 46. The court administrator, under Rule 46, is required to mail the court orders to each party, the county attorney and anyone else as the court may direct. Filing and mailing by the court administrator must be accomplished within 10 days of the date the judicial officer delivers the order to the court administrator.

Like the Federal Rules of Civil Procedure, the Minnesota Rules of Juvenile Procedure permit orders to be served by mail at the party's last known address. Such service is complete upon mailing. Minn. R. Juv. Proc. Rule 68.06 (2000).

Service by mail of the order would appropriately be based upon the address Mr. Jacobs listed in his letter. The address listed in his correspondence is identical to the one used by the court administrator's office when sending the Notice of filing of Order. The Court signed the Order on November 2, 2000, and it was filed by the court administrator on November 3, 2000. On that same day the court administrator's office served upon the parties, by mail, the Notice of Filing of Order. The Notice of Filing of Order relating to Mr. Jacobs' two children was sent to Mr. Jacobs, the attorney for his children, the social worker assigned to the case, the attorney for the mother and the guardian ad litem.

In his appeal to the Minnesota Court of Appeals, Mr. Jacobs submitted a copy of a Notice of Filing of Order, which did not include his name, in support of his claim that he was not properly notified. In an attempt to mislead that court, he did not advise them that the Notice of Filing he

supplied in support of this claim was the notice relating to the other child of his ex-wife, In Re Welfare of P.P., Case file # 66-J1-050326. Mr. Jacobs was not a party to that action because he was not a parent to that child. He *was* listed on the Notice of Filing for the case relating to his children, In Re the Welfare of J.J and N.J., Case File #66-J1-00-050327.

Petitioner offers no evidence that the Notice of Filing of Order on the case involving his two children was not mailed other than the misleading information cited above and accordingly there is no merit to the Petitioner's contention. The same procedure was followed for all six parties listed on the Notice. Of those parties, one chose to timely appeal. The court administrator's file establishes compliance with standard office practices and since the evidence is unrebutted, the conclusion that notice was received will stand. *Nafstad v. Merchant*, 303 Minn. 569, 228 N.W.2d 548 (Minn. 1975).

Petitioner makes no claim that the court administrator's office failed to follow standard office procedure or that such practices were carelessly executed. The mere denial of receipt does not rebut the presumption. There must be proof of failure to follow standard practice, careless execution of the practice, or failure to mail at all to establish that the presumption is unreasonable. *Meckel v. Continental Resources Co.*, 758 F.2d 811 (2d Cir. 1985).

Petitioner claims that the trial court should have known that he planned on appealing this decision because of the things he had earlier appealed. These earlier appeals included four appeals on three different cases to the Minnesota Court of Appeals including his Ramsey County dissolution proceeding, child support determination in Rice County, two different orders from the child protection proceeding, and child support determination appeals to the Minnesota Supreme Court and United States Supreme Court. Even if the judge issuing the

termination order was aware of all these other appeals involving other cases and judges, the obligations of the court and court administrator's office do not change. Each party to the proceeding is entitled to the same notice. The Notice of Filing of Order was sent to all of the parties by the method approved by the Minnesota Rules of Juvenile Procedure.

Mr. Jacobs was personally served the Summons and Petition on August 25, 2000. He responded to the Court by letter dated September 12, 2000, executed by Mr. Jacobs on September 14, 2000 and received by the District Court on September 15, 2000. The address contained in this letter was the same one used by the court administrator when sending the Notice of Filing of Order. The Court issued its Findings of Fact, Conclusions of Law and Order on November 2, 2000. The order was filed on November 3, 2000 and Notice of Filing of Order was sent to the petitioner and five other parties on the same day. One of the parties timely appealed the court's Order to the Minnesota Court of Appeals.

CONCLUSION

The Rice County Court Administrator properly filed the Court's order terminating the Petitioner's parental rights. The Notice of Filing of Order was timely completed and served by mail on all the parties to this action. There is no evidence to support that the Notice was improperly mailed and accordingly Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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